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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,686	05/23/2000	Paul B. Darcy	MFCP.70154	3725
45809	7590	01/14/2005	EXAMINER	
SHOOK, HARDY & BACON L.L.P. 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613			WOO, RICHARD SUKYOON	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/576,686

Applicant(s)

DARCY ET AL.

Examiner

Richard Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,30,32-35,43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-20,30,32-35,43 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1) A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 20, 2004 has been entered.

Response to Arguments

2) Applicant's arguments, filed July 20, 2004, with respect to the prior art rejections have been fully considered and are persuasive. The prior art rejection of the previous office action has been withdrawn.

Claim Rejections - 35 USC § 112

3) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4) Claims 19-20 and 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 19, the claim is directed to a computer readable medium but it has the dependence on Claim 1, method Claim. It is not clear whether Claim 19 is an

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independent claim or is the dependent claim of Claim 1. If the Claim 19 is directed to an independent Claim, the Claim must disclose what limitations should be comprised in the claim body.

Claims 20 and 34-35 suffer the same indefiniteness as Claim 19 above.

Claim Rejections - 35 USC § 102

5) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6) Claims 1, 3-4, 7-10, 13-16, 18-20, 30, 32-35, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by "Modeling Resources Allocation and Performance Measures in Distributed Computer Networks" (hereinafter Modeling).

W.R.T. Claims 1 (19 and 20 if they are deemed to be independent Claims):

Modeling discloses a method comprising:

identifying one or more underlying services (database type, program type, channel type, CPU capacity, etc; see page 581) utilized to execute the computer transaction (see pages 583-585; Figs. 1-4 and Tables 1-3, and the descriptions thereof); and

determining a monetary service providing a cost associated with the one or more services to execute the transaction, wherein determining the monetary service providing cost includes:

identifying each resource (computers, database, program, channels in Tables) utilized to provide the one or more service; and

assigning a portion of the monetary service providing cost of each resource to the computer transaction (see Supra Figs. and Tables); and

summing the monetary service providing cost for each resource to determine the monetary cost for the computer transaction in order to pass the cost for the transaction to a user executing the computer transaction (see Supra Pages 583-585 for the practical applications that provide the monetary cost for the computer transaction).

W.R.T. Claim 3: Modeling further discloses the method, wherein equipment is a utilized resource (see Supra Figs., Tables and the practical application for the hardware) and the monetary service providing cost includes a software cost and the determining step includes calculating the software cost as a percentage of an overall software cost (see page 582 for the total database software cost and Supra Figs. and Tables for the program cost (e.g. Z...));

W.R.T. Claim 4: Modeling further discloses the method, wherein the software is a utilized resource (see *Id.*) and the monetary service providing cost includes an equipment cost and the determining step includes calculating the equipment cost as a percentage of an overall equipment cost (*Id.*);

W.R.T. Claim 7: Modeling further discloses the method, wherein the determining step includes determining a cost for a level of quality of the one or more services (see Supra Figs. and Tables for optimal configurations (more optimized, better performance));

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W.R.T. Claim 8: Modeling further discloses the method, wherein the step of determining a cost for the quality of the services includes determining a cost for the availability of the services (see page 583 for Database availability, for example);

W.R.T. Claim 9: Modeling further discloses the method, wherein the availability cost includes an equipment cost and step of determining a cost for the availability includes calculating the equipment cost as a percentage of an overall equipment cost (see Supra page 583-585 and how the modeling program selects a certain number of database or allocates the equipments according to the cost analysis);

W.R.T. Claim 10: Modeling further discloses the method, wherein the availability cost includes a software cost and step of determining a cost for the availability includes calculating the software cost as a percentage of an overall software cost (see *Id.*);

W.R.T. Claim 13: Modeling further discloses the method, wherein the step of determining a cost for the quality of services includes determining a cost of the response time of the services (see Time Delay, page 583; see chapter 4.1, pages 583-584);

W.R.T. Claim 14: Modeling further discloses the method, wherein the response time cost includes an equipment cost and step of determining a cost for determining a cost for the response time includes calculating the equipment cost as a percentage of an overall equipment cost (see *Id.*);

W.R.T. Claim 15: Modeling further discloses the method, wherein the response time cost includes a software cost and step of determining a cost for determining a cost for

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the response time includes calculating the software (Program Z1, Z2, etc.,) cost as a percentage of an overall software cost (see Supra Figs. and Tables);

W.R.T. Claim 18: Modeling further discloses the method, wherein the determining step includes determining a cost for providing the services and the determining step includes determining a cost for a level of quality of services, including the step of combining the providing cost and the quality cost to define a transaction cost (see Supra Figs. and Tables for optimal configurations (more optimized, better performance)).

W.R.T. Claims 30, (34 and 35 if they are deemed to be independent Claims):

Modeling discloses a method comprising:

- requesting execution of a transaction (see pages 583-585, Figs. and Tables);
- receiving the user process request (so as to achieve network configurations and optimal allocation);
- executing the user process request; and
- determining a monetary cost associated with the execution of the transaction as a function of the services utilized to execute the transaction, wherein determining the monetary service provider cost includes identifying each resource (computers, databases, programs, channels) utilized to provide the service and assigning a portion of the monetary service provider cost of each resource to the computer transaction in order to pass the monetary service provider cost to the user executing the computer transaction (see Supra Pages 583-585, Fig., Tables and optimal configurations).

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W.R.T. Claim 32: Modeling further discloses the method, wherein the determining step includes determining a quality cost of the services (see Supra Figs. and Tables for optimal configurations (more optimized, better performance)); and

W.R.T. Claim 33: Modeling further discloses the method, wherein the step of determining a providing cost of the services includes determining an availability (database availability; Page 583) cost and a response time cost (see Time delay and chapter 4.1, pages 583-584).

W.R.T. Claim 44:

Modeling discloses a system comprising:

a service identification component (inherently, every computer using Modeling's programs must include the component identifying: database type, program type, channel type, CPU capacity, etc; see page 581);

a resource identification component (computers, database, program, channels);

a cost assessment component for determining a monetary cost to a provider for each resource and determining the monetary cost for the transaction based on a total monetary service provider cost for each utilized resource (see Supra Figs. and Tables; Optimal Configurations).

Claim Rejections - 35 USC § 103

7) Claims 5-6, 11-12, 16-17, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modeling.

Modeling discloses the invention as recited earlier, but does not disclose expressly discloses the method, wherein the personnel cost, facility cost are included in the cost; and the fixed costs are identified and summing the providing cost for the fixed cost resource and the providing cost for the variable cost resource to determine a cost for the computer transaction (in Claim 43).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to: include the personnel cost, facility cost; calculate the personnel and facility cost as a percentage of an overall personnel or facility cost; and sum the providing cost for the fixed cost resource and the providing cost for the variable cost resource to determine a cost for the computer transaction, because Applicant has not disclosed that calculating including the above cited variables provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with Modeling's cost calculating models because Modeling discloses a more complete model that integrates most aspects of distributed computer network design by handling the cost structures and the system performance requirements because this model considers simultaneously network reliability, database availability, time delay, distribution of computing power, distribution of programs and databases, allocation of channels, return flow of information and routing strategy.

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Therefore, it would have been an obvious matter of design choice to modify Modeling to obtain the invention as specified in claims.

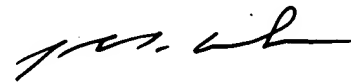
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Woo whose telephone number is 703-308-7830. The examiner can normally be reached on Monday-Friday from 8:30 AM -5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Richard Woo
Patent Examiner
Art Unit 3629
January 6, 2005


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